

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**BERNARD S. LEVI,**

**Plaintiff**

v.

**KAREN HOGSTEN, *et al.*,**

**Defendants**

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**CIVIL NO. 1:CV-07-1839**

**(Judge Rambo)**

**(Magistrate Judge Blewitt)**

**MEMORANDUM**

**I. Background**

Before the court is a report of the magistrate judge to whom this matter was referred in which he recommends that Plaintiff's remaining claims in the captioned case be dismissed. Those claims are First Amendment claims of tampering with legal mail and a retaliation claim. The magistrate judge also recommended that Plaintiff's June 8, 2009 motion for injunctive relief (doc. 122) also be dismissed.

Plaintiff has filed objections to the report and recommendation, Defendants have responded and Plaintiff has filed a reply. The matter is ripe for disposition.

**II. Discussion**

As to the mail tampering issue, Plaintiff claims that if he had been permitted to obtain discovery on this issue, the magistrate judge could be found to have erred in his disposition of the claim. The magistrate judge clearly identified the evidence concerning the mail issue and determined there was no personal involvement by any of the remaining Defendants in the case.

On February 17, 2009, this court granted Defendants' motion for a protective order as to Plaintiff's motion for discovery because Plaintiff was seeking, in part, discovery about the nature of complaints raised by other inmates in other institutions against Defendant McIntyre and did not touch upon the specific fact of this case – personal involvement in Plaintiff's mail complaint. The discovery pertinent to this case which was considered by the magistrate judge clearly shows no personal involvement by the remaining Defendants.

On the issue of Plaintiff being transferred, this issue was not raised in the complaint nor in the amended complaint and Plaintiff is not entitled to relief from this court. Plaintiff was transferred from the Federal Correctional Institution at Allenwood, Pennsylvania to the Federal Correctional Institution at Fairton, New Jersey. He was then transferred to the Federal Transfer Center in Oklahoma City, Oklahoma. He is presently confined at the United States Penitentiary at Beaumont, Texas. Plaintiff's existing claims in this case relate to his confinement at the Federal Correctional Institution at Allenwood, Pennsylvania. The motion for a preliminary injunction concerning his transfer from the Federal Correctional Institution at Fairton, New Jersey can not be addressed by this court.

An appropriate order will be issued.

s/Sylvia H. Rambo  
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SYLVIA H. RAMBO  
United States District Judge

Dated: August 18, 2009.

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**CIVIL NO. 1:CV-07-1839**

**(Judge Rambo)**

**(Magistrate Judge Blewitt)**

**ORDER**

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) Defendants' motion for summary judgment as to Plaintiff's First Amendment claim of mail tampering and the retaliation claim is granted.
- 3) Plaintiff's motion for injunctive relief is denied.
- 4) The Clerk of Court shall enter judgment in favor of Defendants Hogsten, Raleigh, Ferry and McIntyre and against Plaintiff and close the file.
- 5) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.

s/Sylvia H. Rambo

**SYLVIA H. RAMBO**  
United States District Judge

Dated: August 18, 2009.